

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. OPTICAL TELEPHONE CORP., Respondent.	DOCKET NO. FCU-04-55
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued December 15, 2004)

On November 8, 2004, pursuant to Iowa Code §§ 476.103 and 476.3, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by Optical Telephone Corp. (Optical). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On October 13, 2004, Mr. Troy Driscoll of Waterloo, Iowa, submitted a complaint to the Board alleging that his local phone bill included charges for long distance calls he did not make. Mr. Driscoll indicated that the charges were billed on behalf of Optical and that he had not heard of that company.

Board staff identified the matter as C-04-226 and, pursuant to Board rules, on October 14, 2004, forwarded the complaint to Optical at the address on file for response within ten days. Optical did not respond to the complaint.

On November 3, 2004, Board staff issued a proposed resolution concluding that Optical violated Board rules by not responding to the complaint. Staff learned of Optical's change of address by the "return to sender" notice on the returned envelope containing the notice of complaint. Staff sent the proposed resolution to the new address indicated by the U.S. Postal Service on the returned envelope. Staff noted that Optical did not notify the Board of its change of address. In the proposed resolution, staff directed Optical to fully credit all charges to Mr. Driscoll's account, to close the account, and not to pursue any collection action regarding the charges.

In its November 8, 2004, petition, Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because credits alone will not stop the unlawful practice. Consumer Advocate asserts that civil penalties are necessary to ensure compliance and deter future violations. Optical has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule and allow Optical an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on November 8, 2004, is granted. File C-04-226 is docketed for formal proceedings, identified as Docket No. FCU-04-55.

2. Optical Telephone Corp. is directed to file a response to Consumer Advocate's petition on or before January 14, 2005.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15th day of December, 2004.